IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10476 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHALINIDEVI S GUPTA

Versus

SARVODAY COOP. BANK LIMITED

Appearance:

1. Special Civil Application No. 10476 of 2004

MR PS CHAMPANERI for Petitioners.

MR RAVINDRA SHAH for Respondent.

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 27/01/2005

CAV JUDGEMENT

In this petition under Article 226 of the Constitution of India, the petitioners have challenged the legality and validity of the notice issued by the respondent No.2, Recovery Officer, Sarvodaya Cooperative Bank Ltd., Surat dated 12th August 2004 under Section 159

of the Gujarat Cooperative Societies Act, 1961, attaching the properties mentioned in the said notice for the purpose of recovering the amount due and payable under the judgment and award dated 6.5.2003 passed by the Registrar and Board of Nominees,Surat, in Summary Suit No. 265 of 2002 which came to be passed against Saraswati Tex-O-Fab Ltd (Principal Debtor) and its guarantors.

2. It appears from the record that a Summary Suit came to be filed by Sarvodaya Sahakari Bank Ltd., Surat against one Saraswati Tex-O-Fab Ltd., (hereinafter referred to as "the Company"), Surat, its Directors and guarantors before the learned Board of Nominees, Surat being Summary Suit No. 265/2002 for an amount of RS. 90,88,482. An award came to be passed by the learned Board of Nominees, Surat, on 6.5.2003 for an amount of Rs. 90,88,482 along with interest at the rate of 16.5% p.a. from the date of 12th March 2002 till the amount is recovered. It appears from the record that the said judgment and award dated 6.5.2003 in aforesaid Summary Suit No. 265/2002 has become final inasmuch as there is nothing on record to shwo that the said suit is the subject matter of appeal before the Appellate Court. Attachment notice dated 12th August 2004 came to be issued by the Recovery Officer, i.e., one Shri R.C. Tailor who was appointed as Recovery Officer of the aforesaid Bank attaching the properties mentioned in the said notice (4 in numbers) and in the said notice it was stated that the properties in question will be attached on 27th August 2004 (property situate at Surat) and on 30th August 2004 (property situate at Mumbai). By the said notice, the judgment-debtors were informed that if the amount of Rs. 1,20,04,277 is paid on or before the aforesaid date attachment will be postponed. As stated hereinabove, the said attachment notice is issued by the Officer under Section 159 of the Gujarat Cooperative Societies Act, 1961 {"the Act" for short}. Being aggrieved and dissatisfied with the aforesaid attachment notice dated 12th August 2004 issued by the Officer under Section 159 of the Act, the petitioners have preferred the present Special Civil Application for an appropriate writ, order or direction in the nature of prohibition, mandamus in respect of the property described at Serial No. 1 and 4 in the Schedule of description of the properties contained in the said attachment notice dated 12.8.2004, i.e., one property situated at Surat being Flat No. 210, Rajhans Complex, Opp: J.K. Towers, Khatodara, Surat, and another property, Flat No. B-/0, Dariyamahal Apartments, 80, Napean Sea Road, Mumbai.

3. Shri PS Champaneri, learned advocate appearing on behalf of the petitioners has submitted that so far as the property of Flat No. 210, Rajhans Complex, Surat is concerned the same is purchased by petitioner No.1 by registered Sale Deed dated 26th April 1989 and the original-debtors had nothing to do with the said property. The said property is neither given as a collateral security and/or no documents are executed by any of the judgment-debtors. It is further submitted that so far as property of B/30, Dariyamahal Apartments, 80, Napean Sea Road, Mumbai, is concerned the said flat has also been purchased by the petitioner No.2 and was transferred in favour of petitioner No.2 along with her husband and 2 minor children on 29th December 1986 and the petitioner is residing in the said society. It is further submitted that petitioner No.2 is also not a loanee nor has stood as a guarantor of the said term-loan and petitioner No.2 has also not deposited title deeds of the said flat in favour of respondent No.1 Bank and therefore the attachment notice issued by the respondent No.2 attaching the aforesaid two properties is ex facie illegal and without jurisdiction. It is further submitted that necessary procedure which is required to be followed under the provisions of Section 159 of the Act has not been followed. It is further submitted that even the procedure which is required to be followed under Rules 41 to Rule 44 has also not been followed and that the respondent No.2 has no jurisdiction and/or authority to exercise powers under Section 159 of the Act. It is therefore requested to quash and set aside the impugned notice dated 12th August 2004.

4. This Court [Coram: Mr. Jayant Patel, J.] has passed the following order on 26th August 2004;

> "Mr. Champaneri, learned counsel for the petitioners states that for showing that the petitioner No.2 is the owner of the property No.4, documentary evidence is not produced, but he shall produce the same on the returnable date.
>
> So far as property No.1 is concerned, copy of registered sale is produced on record.
>
> In view of the above, Notice returnable on 31st August 2004. By way of ad-interim order, status-quo regarding property No.1 shall be maintained.
>
> Direct service to respondent No.2".

Thereafter, the matter came to adjourned time and again as the learned advocates appearing for the parties jointly submitted that the matter was likely to be settled amicably as the Principal Debtor has moved an application before the Bank for One Time Settlement and some part payment is also made. However, it appears that the same was not materialised and therefore the matter came to be argued on merits by Shri PS Champaneri, learned advocate appearing on behalf of the petitioners.

5. Shri Ravindra Shah, learned advocate appearing on behalf of the respondents had vehemently opposed the present Special Civil Application. It is submitted that the petitioners have not come out with clean hands and have tried to suppress the material facts. It is submitted that petitioner No.1 is wife of Sharadbhai Rajendrakumar Gupta, who is one of the guarantors. Petitioner No.2 is wife of Rajendrakumar Kesardev Gupta who is also one of the guarantors. They are also family members of the Directors as well as guarantors and this fact has been deliberately suppressed by the petitioners. It is further submitted that the petitioners have deliberately not given their full names as their names are given as 'Shalinidev S. Gupta' and 'Binadevi Gupta'. It is further submitted that in the Special Civil Application the petitioners have deliberately not given the particulars with regard to their relations with the Directors of the petitioners as well as guarantors and therefore it is submitted that the petitioners are not entitled to any discretionary relief in a petition under Article 226 of the Constitution of India. It is also further submitted that so far as petitioner No.2 is concerned, who claims to be owner of the property situated at Mumbai, i.e., B/30 Dariyamahal, Napean Sea Road, she has not produced any documentary evidence in support of her submission that she is owner of the said flat in question. It is further submitted that in fact in the petition itself it has been submitted that the flat in question at Mumbai is transferred in favour of her along with her husband and two minor children. As stated hereinabove, thus, the petitioner No.2 claims to be coowner of the aforesaid flat in question. It is also submitted that though it is stated in the memo of petition, more particularly in paragraph No. 3.2 that the property in question at Mumbai was transferred in favour of petitioner No.2 along with her husband and 2 minor children on 29th December 1986, but the petitioner No.2 has deliberately not given the name of her husband and 2 minor children who are Raajendrabhai Kesardev Gupta

(husband of petitioner No.2), Sharadbhai Rajendrakumar Gupta and Hemantbhai Rajendrakumar Gupta (sons and guarantors). Therefore it is submitted that the petitioners have not come out with clean hands and have tried to mislead this Court and have suppressed the material facts which disentitles the petitioners any discretionary relief. Under the circumstances, it is further submitted that at no point of time the petitioners have approached the respondent No.2 making a grievance as raised in the present Special Civil Application and straightway the present Special Civil Application has been filed asking for writ of mandamus and/or writ of prohibition which requires to be dismissed. It is also further that so far as respondent No.2, Shri RC Tailor is soncerned she is Sales Tax Officer who is authorised officer for recovery of the amount as contemplated under Section 159 of the Act. It is further submitted that as original judgment-debtors had not challenged the authority of the respondent No.2 as Recovery Officer it is not open for the petitioners to challenge the same. It is also further submitted that so far as not following procedure under Section 159 is concerned, necessary procedure as required under Section 159 is already followed. It is also further submitted that when the original judgment-debtors are not coming forward to challenge the same, it is not open for the petitioners to challenge the same. It is also submitted that so far as recovery and notices under Section 159 of the Act are concerned it is without prejudice to any other mode of recovery provided under the Act and therefore it is submitted that the impugned notices dated 12th August 2004 is in accordance with law and the present Special Civil Application is required to be dismissed with exemplary costs.

6. Heard the learned advocates appearing on behalf of the parties. One Saraswati Tex-O-Fab Ltd., has taken term-loan from Sarvodaya Sahakari Bank Ltd, Surat. Sharadkumar Rajendrabhai Gupta and Hemantbhai Rajendrakumar Gupta were directors of the said company. Sharadkumar Rajendrabhai Gupta and Hemantbhai Rajendrakumar Gupta are sons of petitioner No.2. One Rajendrakumar Kesardev Gupta stood as guarantor and the said Rajendrakumar Kesardev Gupta is husband of petitioner No.2. Petitioner No.1 seems to be wife of Sharadkumar Rajendrabhai Gupta, one of the Directors of the said Company and mother-in-law of petitioner No.2. There is a judgment and award passed by the Registrar, Board of Nominees, Surat, dated 6.5.2003. As per the said judgment and award in Summary Suit No. 265 of 2002 for the amount of Rs. 90,88,482 with interest at the

rate of 16.5% p.a. from 12th March 2002 an amount of Rs. 1,20,04,277 is due and payable as on 12th August 2004. The said judgment and award passed by the learned Board of Nominees, Surat has become final as the same is not challenged. Exercising power under Section 159 of the Act, the attachment notice has been issued by the respondent No.2. It is the contention of the petitioner No.1 that one of the properties which is sought to be attached by the aforesaid notice dated 12th August 2004 i.e., the property situated at Surat at 210, Rajhans Complex, was purchased by her in the year 1999 and therefore the same cannot be attached unless and until the same is given as a collateral security. The petitioner No.2 has challenged the said notice in respect to the property mentioned at Serial No.4 in the said notice, i.e., property situated at Mumbai at B/30, Dariyamahal, Napean Sea Road, contending inter alia that the said property is transferred in her name along with her husband and 2 minor children. As stated hereinabove, the petitioner No.2 has not given any particulars and the names of her husband and her two minor children in the petition. Rajendrakumar Kesardev Gupta (guarantor) is the husband of petitioner No.2. Sharadbhai Rajendrakumar Gupta and Hemantbhai Rajendrakumar Gupta (Directors of the company) are her sons who might be minors at the relevant time in 1986. If the names would have been given by the petitioner No.2, then the petitioner No.2 might have been in difficulty and therefore deliberately and only with a view to mislead this Court, the petitioner No.2 has not given the particulars and names of her husband and 2 minor children, who, according to her, are even coowners of the property situated at Mumbai. Thus, the petitioner No.2 has suppressed the material facts and has tried to mislead this Court which disentitles her to get any discretionary relief in a petition under Article 226 of the Constitution of India.

6.1. It is also required to be noted at this stage, that so far as petitioner No.2 is concerned, in fact no documentary evidence is produced in support of her say that the property in question at Mumbai is also transferred in her name. Thus in absence of any evidence, the petitioner No.2 has no locus and/or authority to challenge the aforesaid notice. So far as petitioner No.1 is concerned, she claims to be owner of property at 210, Rajhans Complex, Surat, on account of registered Sale Deed dated 18.9.1999. It is required to be noted that the address of the said Company, i.e., Saraswati-Tex-O-Fab Ltd is at 210, Rajhans Complex, Opp: JK Tower, Khatodara, Ring Road, Surat. The document which is relied upon by petitioner No.1, i.e., Sale Deed

is dated 26th April 1999 and the term-loan is given to the Company for an amount of Rs. 75 lakhs on 2.11.1998. As stated hereinabove, the petitioner No.1, who is wife of one of the Directors, i.e., Sharadbhai Rajendrakumar Gupta has at no point of time approached the respondent No.2 pointing out the facts which are stated in the present Special Civil Application to withdraw the attachment notice so far as property situate at Surat is concerned, and straightway the present Special Civil Application has been filed. If the petitioner is right in his submission, then the petitioner should have first approached the respondent No.2 pointing out that the property which is sought to be attached is belonging to her is of her ownership and the same could not have been attached, and instead she has filed the present Special Civil Application. As stated hereinabove, the petitioner No.1 is the wife of one of the Directors against whom the judgment and award has been passed for Rs.90,88,482 with interest at 16.5% p.a. and a total amount of RS. 1,20,04,277 is due and payable under the award. As stated above, the petitioners have not come out with clean hands and have deliberately suppressed the material facts pointing out relationship of the petitoners with the Directors of the Company as well as guarantors which disentitles the petitioner any relief in a petition under Article 226 of the Constitution of India. It is also required to be noted that the original judgment-debtor, i.e., husband of the petitioner No.2 who is one of the Directors of the company as well as husband of the petitioner No.2, i.e., guarantor as well as sons of petitioner No.2 Directors of the Company have neither challenged the judgment and award nor challenged the attachment notice under Section 159 of the Act. Even considering the provisions of Section 159 of the Act, the Registrar or any officer subordinate to him and empowered by him in this behalf, without prejudice to any other mode or recovery provided by or under the Cooperative Societies Act can recover the same by the attachment and sale and/or by sale without attachment of the property of the person against whom a decree and award has been obtained or passed. In the attachment notice itself it is stated that Shri RC Tailor, who has issued the notice is the Sales TAx Officer who is authorised to recover the amuont by way of attachment and sale under Section 159 of the Act. Thus, it cannot be said that the attachment notice dated 12th August 2004 is in any way illegal, without authority under the law and/or without jurisdiction.

7. For the reasons stated hereinabove and mainly on the ground that the petitioners have not come out with

clean hands and have suppressed the material facts but have tried to mislead the Court by not giving relevant facts, the petitioners are not entitled to any relief in the present Special Civil Application. Under the circumstances, the Special Civil Application is dismissed with exemplary costs of RS. 5,000. Notice is discharged. Ad-interim relief granted earlier stands vacated forthwith.

[M.R. Shah, J.]

rmr.